Supreme Court, U.S.
FILED
JUL 10 1985
ALEXANDER L. STEVAS
CLERK

No. 84-1799

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

LARRY FRENCH,

Petitioner,

v.

THE MEAD CORPORATION, MEAD FORMS DIVISION,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

Whether the United States Court of Appeals for the Sixth Circuit erred in affirming the District Court's judgment in favor of Respondent, when the District Court:

1) Credited the testimony of Respondent's witnesses regarding the reasons for Petitioner's discharge from employment;

2) Properly concluded that Petitioner failed to present a *prima facie* case of sex discrimination; and

3) Determined that, even if Petitioner had established a *prima facie* case of sex discrimination, Respondent demonstrated a nondiscriminatory reason for discharging him.[1]

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[1] References are to the opinions of the United States District Court for the Southern District of Ohio and Court of Appeals for the Sixth Circuit, which are attached in the Appendix appearing at pp. 7-21 of the Petition for Writ of Certiorari. Page references to these decisions will be abbreviated "App. at ——." Page references to the Petition will be abbreviated "Pet. at ——."

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Miscellaneous:

Equal Employment Opportunity Commission's Guidelines on Sexual Harassment, 29 C.F.R. § 1604.11 1

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OPINIONS BELOW

Although the texts of the decisions below are not officially reported, the Order of the Sixth Circuit Court of Appeals appears in a table in the Federal Second Reporter. The citation is *French* v. *Mead Paper Corporation, Mead Forms Division*, 758 F.2d 652 (6th Cir. 1985) (Table). The District Court's decision is unofficially reported as *French* v. *Mead Corporation*, 33 Fair Employment Practice Cases 635 (S.D. Ohio 1983).

FEDERAL STATUTES OR REGULATIONS INVOLVED

Respondent agrees with the Petitioner that the statute involved in this case is Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e *et seq.* ("Title VII"). Respondent denies, however, that the Equal Employment Opportunity Commission's Guidelines on Sexual Harassment, 29 C.F.R. § 1604.11, are pertinent to this case.

COUNTERSTATEMENT OF THE CASE

A statement of the case by Respondent is necessary because the statement appearing at pp. 2-4 of the Petition for Writ of Certiorari is misleading. Petitioner has simply ignored the findings of fact made by the District Court which are dispositive of his claim. As set forth more fully below, Petitioner's entire argument is based on a view of the facts that was expressly rejected by the District Court and the Court of Appeals.

Petitioner, Larry French ("French"), a male, was employed as a mill supervisor by Respondent, The Mead Corporation, Mead Forms Division ("Mead"), until he was discharged on July 1, 1980.[2] French filed a complaint against Mead, alleging that he had been discriminated against on the basis of his sex in violation of Title VII. French's claim was tried before United States District Court Judge Robert M. Duncan in March, 1983. After a four day trial and the submission of post-trial briefs, the District Court entered judgment in favor of Mead. App. at 9-21. French appealed to the Sixth Circuit Court of Appeals, which affirmed the District Court's judgment in a per curiam decision issued after consideration of the parties' briefs and oral argument. App. at 8.

Mead presented evidence at trial which showed that French was terminated for sexually harassing female subordinates. A female employee complained of unfavorable work assignments as the result of her having rebuffed French. As a result, Mead officials investigated and concluded that French had sexually harassed a number of female employees who had worked for him. The allegations were reviewed with

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[2] The following list of subsidiary corporations and related entities is provided in accordance with Sup. Ct. R. 28.1:

Brunswick Pulp & Paper Company
Georgia Kraft Company
Seaboard Paper Company
Schoeller Technical Papers, Inc.

French on two occasions, but Mead did not believe French's denials.

The female employees testified at trial. As set forth in the District Court's opinion, French had, at various times, explicitly solicited sex, engaged in unwanted sexual touching and horseplay, and used crude language with sexual connotations. App. at 12-14. Further, there was evidence that French attempted to trade sex for more favorable work assignments. App. at 12, 13.

As a result of Mead's belief that the allegations of sexual harassment were true, it terminated French's employment. The District Court concluded, after hearing testimony from the female employees, French and Mead officials, that "it was not unreasonable for them [Mead officials] to believe that such activity by a male supervisor produced a psychologically and emotionally unpleasant and adverse work environment for the complaining women." App. at 17. Finally, the District Court was "unable to discover anything that a more thorough investigation would have turned up that would amount to a significant basis for concluding that the company officials' actions were unreasonable or taken in bad faith." App. at 17.

The Sixth Circuit Court of Appeals adopted these findings and conclusions in affirming the District Court's judgment in favor of Mead. App. at 8.

REASONS FOR DENYING THE WRIT

I. Petitioner Has Presented No Reason to Reject the Findings of Fact of the District Court

The findings of fact of the District Court established that French engaged in the sexual harassment of female employees, Mead discovered this misconduct and, as a result, terminated French's employment.

French's argument is based on a version of the facts which he failed to establish at trial. For example, French asserts his termination was based "on the mere allegations of a female employee" of sexual harassment. Pet. at 5. The District Court found, however, that the termination was based on the statements of a number of female employees. App. at 17. French asserts that Mead did not "advise [him] of the allegations or obtain his rebuttal." Pet. at 5. The District Court found that French was informed of the allegations on two occasions, and "gave him the opportunity to rebut the charges." App. at 13, 15.

Finally, French asserts that Mead failed to apply its disciplinary policy to him as it would to female employees. Pet. at 5. The District Court found that there was "no credible evidence from which such an inference [could] reasonably be drawn." App. at 21.

This Court has recently reiterated that an appellate court is bound by the district court's findings of fact unless they are "clearly erroneous" within the meaning of Fed. R. Civ. P. 52(a). *Anderson* v. *Bessemer City*, 470 U.S. ——, 105 S. Ct. 1504, 84 L.Ed.2d 518, 528 (1985). The reason for such deference is clear:

> The rationale for deference to the original finder of fact is not limited to the superiority of the trial judge's position to make determinations of credibility. The trial judge's major role is the determination of fact, and with

> experience in fulfilling that role comes expertise. Duplication of the trial judge's effort in the court of appeals would very likely contribute only negligibly to the accuracy of fact determination. . . .

Id., 84 L.Ed.2d at 529. Where, as here, the District Court's findings "are based on determinations regarding the credibility of witnesses, Rule 52(a) demands even greater deference to the trial court's findings." *Id.*, 84 L.Ed.2d at 529. *See also Wainwright* v. *Witt*, 469 U.S. —, 105 S. Ct. 844, 83 L.Ed.2d 841 (1985) (noting that only trial court can judge witness' demeanor and belief in what is said).

The District Court credited the testimony of Mead officials and concluded that they held a reasonable, good faith belief that French had engaged in conduct which warranted termination.[3]

II. The Courts Below Applied the Correct Legal Analysis to the Facts.

The District Court fairly applied the standards established by this Court in *Texas Dept. of Community Affairs* v. *Burdine*, 450 U.S. 248 (1981), and *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973), regarding the burdens of proof and "going forward with the evidence" in a Title VII case. The District Court properly concluded that French failed to establish a *prima facie* case of discrimination under the *McDonnell Douglas* paradigm. The court noted that French was terminated by a male, that he was replaced by another male, and that there "is no basis in law or common sense in the Mead workforce scenario [where only one of 100

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[3] At best, French's argument amounts to a claim that there is another permissible view of evidence. However, "[w]here there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous". *Anderson* v. *Bessemer City, supra*, 84 L.Ed.2d at 528. *See Inwood Laboratories, Inc.* v. *Ives Laboratories, Inc.*, 456 U.S. 844 (1982); *United States* v. *Yellow Cab Co.*, 338 U.S. 338, 342 (1949).

supervisors is female] to give a white male supervisor a disfavored status which would trigger an inference of discrimination". App. at 19. Having demonstrated only that he was capable of performing his job and that he was discharged, French was clearly not entitled to the benefit of a judicially created inference of sex discrimination and therefore did not establish a *prima facie* case. *See McDonnell Douglas, supra,* 411 U.S. at 802; *Becton* v. *Detroit Terminal of Consolidated Freightways,* 687 F.2d 140, 144 (6th Cir. 1982), *cert. denied,* 460 U.S. 1040 (1983); *Davin* v. *Delta Airlines Inc.,* 678 F. 2d 567, 570 (5th Cir. 1982); *Flowers* v. *Crouch-Walker Corp.,* 552 F.2d 1277 1282 (7th Cir. 1977).[4]

The District Court found that even if French had established a *prima facie* case of sex discrimination, Mead rebutted that case by articulating a nondiscriminatory reason for his termination. Mead had a reasonable belief that French had made unwelcome sexual overtures to women, and that these overtures had a demonstrable adverse effect on the work environment. If Mead had condoned such a hostile environment, it could have led to liability. *See, e.g., Vinson* v. *Taylor,* 753 F.2d 141 (D.C. Cir. 1985); *Bundy* v. *Jackson,* 641 F.2d 934 (D.C. Cir. 1981).

Finally, the District Court concluded that Mead's asserted reasons for French's termination were not pretextual. The court held that, even though it "may have reached conclusions different from those of Mead managers, it is not and should not be the Court's function to substitute its judgment for theirs unless their judgment is unreasonable or exercised in bad faith". App. at 20. This holding reflects the uniform view of the federal courts. *See Crimm* v. *Missouri Pacific*

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[4] Significantly, French failed to produce any evidence that he was treated differently than similarly situated female employees. Evidence of dissimilar treatment is essential in disparate treatment cases. *See Burdine, supra,* 450 U.S. at 258; *Brown* v. *ASD Computing Center,* 519 F. Supp. 1096, 1110 (S.D. Ohio 1981), *aff'd.* unpublished order dated March 21, 1983 (6th Cir. 1983).

Railroad, 750 F.2d 703, 713 (8th Cir. 1984); *Jones* v. *L.A. Community College District*, 702 F.2d 203, 205-6 (9th Cir. 1983); *Jones* v. *Orleans Parish School Board*, 679 F.2d 32, 38 (5th Cir. 1982).

The District Court's application of the *McDonnell Douglas* and *Burdine* standards to the facts of this case was correct in all respects. The Court of Appeals did not err in affirming judgment in favor of Mead.

III. This Case Does Not Involve An Important Question of Federal Law.

French asserts that the courts below have denied him the protection of Title VII because he is a male and that this result conflicts with the decisions of this Court. Pet. at 5-6. There is no merit in this argument. Mead does not suggest, and the District Court did not hold, that males cannot state a claim for sex discrimination under Title VII. App. at 19. The District Court simply held, based on the facts of the case before it, that French did not establish a *prima facie* case of sex discrimination, since he failed to show that he was treated differently than similarly situated female employees. In any event, the District Court gave French the benefit of the doubt and proceeded to apply a complete *Burdine* analysis. Thus, the District Court gave French every opportunity to prove his claim under Title VII. Because the facts of the case do not support his claims, there is no foundation upon which his appeal can stand.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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